

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

NANCY A. RAABE,

Plaintiff,

v.

Civil Action No. 2:23-cv-00580

OFFICER HARVEY, and
JOHN/JANE DOE(S),

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is defendant Officer Harvey's Motion to Dismiss for failure to prosecute (ECF No. 15), filed April 25, 2024. When plaintiff's counsel was granted leave to withdraw and plaintiff was left to proceed pro se, this matter was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and a recommendation for disposition ("PF&R"). Judge Tinsley entered a PF&R (ECF No. 21) on May 21, 2024, to which neither party has filed objections.

Plaintiff Nancy Raabe initiated this civil action in the Circuit Court of Kanawha County, West Virginia, on April 12, 2023, by filing a complaint alleging that, on April 12, 2021, members of the Metropolitan Drug Enforcement Network Team

subjected her to an unlawful search that unreasonably intruded her bodily integrity. Defendant Officer Harvey removed this action on August 28, 2023.

Plaintiff's counsel, Paul Stroebe, filed a motion to withdraw (ECF No. 14) on April 24, 2024, explaining that despite numerous attempts to communicate with plaintiff over a ten-month period, he had been unable to contact her. The court granted the motion to withdraw in an order of April 26, 2024 (ECF No. 17), and, as plaintiff was subsequently left proceeding pro se, this action was referred to Judge Tinsley. Judge Tinsley ordered plaintiff to submit a status report informing the court whether she continued to proceed with this action (ECF No. 18), entered April 29, 2024, to which plaintiff did not respond. The order referring the action to the magistrate judge and the order requesting a status report were both returned to the Clerk's Office as undeliverable and were re-sent to plaintiff's forwarding address.

Judge Tinsley did not review Officer Harvey's motion to dismiss, but rather sua sponte considered whether to involuntarily dismiss the action for failure to prosecute. See PF&R at 3. Judge Tinsley reviewed the four factors set forth by the Court of Appeals for the Fourth Circuit in Hillig v. Commissioner of Internal Revenue, 916 F.2d 171, 174 (4th Cir.

1990), which govern dismissal for failure to prosecute, and found that they all supported involuntary dismissal. See id. at 4-7.

The court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings and recommendations to which no objection has been made. See Thomas v. Arn, 474 U.S. 140 (1985); see also 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") (emphasis added). Failure to timely file objections constitutes a waiver of de novo review and the plaintiff's right to appeal the order of the court. See 28 U.S.C. § 636(b)(1); see also United States v. De Leon-Ramirez, 925 F.3d 177, 181 (4th Cir. 2019) (parties typically may not "appeal a magistrate judge's findings that were not objected to below, as [28 U.S.C.] § 636(b) doesn't require de novo review absent objection"); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989).

Objections in this case having been due on June 7, 2024, and none having been filed, this matter may be duly adjudicated. The court, reviewing both the magistrate judge's


proposed findings as well as Officer Harvey's motion to dismiss, agrees that dismissal for failure to prosecute is appropriate.

Accordingly, it is ORDERED that:

1. The magistrate judge's Proposed Findings and Recommendations be, and hereby are, ADOPTED by the court and incorporated herein;
2. Officer Harvey's motion to dismiss (ECF No. 15) be, and it hereby is, GRANTED; and
3. This civil action be, and it hereby is, DISMISSED from the docket of this court for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk is directed to transmit copies of this order to all counsel of record, and unrepresented parties, and the United States Magistrate Judge.

ENTER: June 10, 2024


John T. Copenhaver, Jr.
Senior United States District Judge